IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11123 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESH UDHAVRAM YADAV

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR ST MEHTA for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 14/12/2000

ORAL JUDGEMENT

Heard learned advocate Ms S.G. Patel for the petitioner and Mr S.T. Mehta for the respondents nos.1, 2 and 3 and Ms Davawala for respondent no.4.

2 The petitioner has challenged the order of detention dated 26.9.2000 passed by respondent no.2, District Magistrate, District Banaskantha, Palanpur, against the petitioner in exercise of the powers conferred under Section 3(2)(a) of the Prevention Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("the Act" for short).

3 The petitioner was served with the said order on 26.9.2000 and was committed to the Central Jail, Sabarmati, Ahmedabad.

4 The grounds of detention served to the petitioner are produced on record vide Annexure-B. The perusal of the said grounds suggests that the petitioner has been dealing in a milk product from a premises hired from one Majirana Rupabhai Dharmabhai at vilalge MajiRanavas, Taluka Amir Gadh, District Banaskantha.

5 That on 21.7.2000 Director of Civil Supplies Department carried out a raid on the above premises of the petitioner and during the search it was found that 880 litres of blue coloured kerosene stored in four barrels. The petitioner could not account for the possession of the same and admitted that he has purchased the said kerosene to prepare the milk products of his business. That the said quantity of kerosene was seized after taking samples and sent to FSL and on recipt of report of FSL it was found that kerosene seized from the possession of the petitioner was made for distribution at subsidized rate on ration card. That on further enquiry respondent no.2 as a detaining authority has come to the conclusion that in order to prevent the petitioner from indulging into prejudicial activity, no other remedy would be fruitful and as such the impugned order of detention against the petitoner is passed.

6 The petitioner has challenged the validity of the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner that the brother of the petitioner has sent representation dated 17.10.2000, copy of which is produced at Annexure-C to the petition, and it was contended that the documents supplied to the petitioner are in Gujarati while the petitioner does not know reading and writing of Gujarati language. It is further requested that copy of the said representation may be sent to the Advisory Board as well as Central Government. The representation further suggests that out of the bunch of documents supplied to

the petitioner with the grounds of detention page nos.21 and 27 were not found and were missing. A request was made to supply the said pages. According to petitioner, respondents nos.1 and 2 have failed to provide and/or supply translated copies of the documents annexed with the grounds of detention. Not only that but a vital document of FSL report which is described in the index is also not supplied and the representation has not been forwarded to the Central Government for consideration. That non-supply of vital documents prevented the petitioner from making an effective representation and not forwarding the representation for Central Government have violated the fundamental rights of the petitioner which has rendered continued detention of the petitoner illegal and as such detention order is required to be quashed and set aside.

7 On presentation of petition Rule was issued vide order dated 19.10.2000. The respondents have appeared. One Mr P.R. Shukla, Deputy Secretary, Government of Gujarat, Food and Civil Supplies and Consumer Affairs Department, has filed an affidavit dated 16.11.2000 in reply on behalf of respondents nos.1, 2 and 3 while one Mr R.N. Tripathi, Under Secretary, Department of Consumer Affairs, has filed affidavit sworn on 13.11.2000 on behalf of respondent no.4.

8 On perusal of affidavit-in-reply on behalf of respondent no.4 it prima facie appears that no representation has been forwarded to the Central Government on behalf of the petitioner. That the perusal of the affidavit filed on behalf of respondents nos.1 to 3 is devoid of any fact showing explanation as to why the translated copies of documents as claimed on behalf of the petitioner were not supplied to and no explanation has been given why the vital document of FSL report as enumerated in para 2 of the grounds was not supplied along with the grounds of detention to the petitioner.

9 That non-supply of vital documents on which reliance has been placed while passing the order of detention is fatal to the validity of the detention order. Furthermore, non-supply of a copy of document translated in a language known by the detenu is always fatal to the detention order and the act of not forwarding the representation made on behalf of the petitioner to the Central Government has rendered the continuous detention of the petitioner illegal.

10 On the basis of the foregoing discussion, I am

constrained to hold that the impugned order of detention dated 26.9.2000 passed by respondent no.2 against the petitioner being bad in law deserves to be quashed and set aside and hence the same is quashed and set aside. The petitioner, Ramesh Udhavram Yadav, is ordered to be released forthwith if not required in any other case. Rule to that extent is made absolute. No order as to costs. Direct Service is permitted.

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(AK TRIVEDI J.)

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